

REPORT

OF

THE HONOURABLE JAMES MAGEE, and

THE HONOURABLE FRANK EGERTON HODGINS.

APPOINTED BY ORDER-IN-COUNCIL TO ENQUIRE INTO

CERTAIN MATTERS REGARDING THE ELECTION HELD ON

DECEMBER 1st, 1926, IN THE ELECTORAL DISTRICT

OF SOUTH OTTAWA.

— — —



THE HONOURABLE JAMES JACOB, Esq.
THE HONOURABLE JAMES JACOB, Esq.
APPOINTED BY HER MAJESTY TO THE
OFFICE OF SECRETARY OF THE
DEPARTMENT OF THE INTERIOR
IN THE DISTRICT OF
ONTARIO
AT OTTAWA

TO HIS HONOUR THE LIEUTENANT GOVERNOR
OF THE PROVINCE OF ONTARIO:

MAY IT PLEASE YOUR HONOUR,

We, the undersigned Commissioners appointed
by His Majesty's Letters Patent dated the
first day of March, A. D. 1928, issued under
Order of Your Honour in Council to enquire
into and report to Your Honour upon the
matters therein mentioned, have the honour
to report as follows:

We have had the assistance of Mr. Starr, K. C.,
who was assigned by Your Honour in Council to act as Counsel
for the Commission, and also of Mr. McRuer, appearing as
Counsel on behalf of Mr. Sinclair, M. L. A. for South
Ontario. We also requested the presence of and have been
attended by Mr. Sinclair, Mr. Thomas M. Birkett, M. L. A.
for South Ottawa, and Mr. Robert R. Sparks who was a
candidate for election as Member of the Legislative Assembly
for South Ottawa at the general election in December 1926.

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for South Ontario at the general election in December 1928.

We have called and have examined as witnesses before us all persons whom, from any evidence or allegations or suggestions or any circumstances disclosed before us, we considered likely to be able to give any information as to the matters for enquiry.

A transcript of the evidence, certified by the stenographers appointed to report the proceedings, accompanies our report.

The facts as disclosed, derived from testimony of the witnesses appearing before us, all of whom were sworn, may be stated as follows:


The date fixed for the nomination of candidates for the general election of Members of the Legislative Assembly was 20th November, 1926, and the date for polling was 1st December, 1926. The King's Printer had previously provided a supply of sheets of specially manufactured ballot paper, specially watermarked, sufficient for the Province, which by his direction had been sent by the manufacturer direct to the United Press at Toronto and by the latter printed with black borders with spaces within which the candidates' names could be locally printed in each constituency. These sheets when so printed had been sent by the United Press to the office of the Clerk of the Crown in Chancery in packages convenient in size to be sent by the latter to the various Returning Officers. Each sheet had blanks for twelve names and this if only two candidates were nominated could be cut into six ballots.

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A transcript of the evidence, certified by the
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Mr. Francis M. Scott had been appointed Returning Officer for South Ottawa and before nomination day the Clerk of the Crown in Chancery sent to him in addition to the necessary forms and stationery a supply of these packages believed to contain 8000 ballot sheets. These on arrival at Ottawa were taken to Mr. Scott's residence. Later they were by his direction taken to the Modern Press, a printing establishment at Ottawa, to have the candidates' names printed in, and after the nomination Mr. Scott directed the Modern Press to print 30,000 ballots and make them up into 140 books or "pads" of 100 ballots each, 140 of 50 each and the remainder of 25 each. The ballots were each to be numbered on the counterfoil and stub parts consecutively with numbers from 1 to 30,000 and had to be perforated between ballot and counterfoil and stub so as to allow ready separation at the polls. The printing and consecutive numbering were done by one person on one machine in one operation. Necessarily, for the various operations of printing, perforating, cutting, sorting into pads and wiring or "stitching" these and putting the pads into packages for return to Mr. Scott, the ballot papers would have to pass through several hands at the Modern Press.

The 30,000 ballots would require 5000 sheets beside some few, about a dozen, which were spoiled in the printing. The packages of pads or books of ballots when completed were sent to Mr. Scott's house in three lots and there is no reason to doubt that the full 30,000 were received by him and he did not dispute this although he did not actually count the pads.

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From examination of the pads of stubs returned by the Deputy Returning Officers it would appear that those numbered from 1 to 14,000 were put up in pads of 100 each, those from 14,001 to 21,000 in pads of 50 each and the others in pads of 25 each. Mr. Scott had in his proclamation specified 94 polling subdivisions numbered 148 to 194 and 26 to 72 but in 29 of these he provided, under S.54 (6) of The Ontario Election Act 1926, an additional polling place and there was an advance poll, under Sec.87, for expectant absentees making 124 polling places in all. To all the Deputy Returning Officers Mr. Scott gave their supply of ballot pads at his house, excepting to four or five to whom he delivered them elsewhere. Each Deputy received several books or pads of ballots which might be of different quantities, not all consecutive in number. Mr. Scott made no note of and was unable to state the number or size of pads or the numbers on any of the pads given to any of the Deputies so that any particular number might be traced to him, nor did he note the number of pads left undistributed nor the numbers on them. He states and his return to the Clerk of the Crown in Chancery of the voting shows that he gave out to the Deputies 28,650 ballots. He would thus have left in his hands 1350 undistributed ballots to account for, besides nearly 3000 sheets of printed ballot blanks which had been delivered to the Modern Press.

Mr. Scott's return, Form 32 under Sec.143 of The Election Act shewing the result at the different polling places from the Deputy Returning Officers' certified statements, shews that 9171 votes were counted as polled

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for Mr. Birkett and 5576 for Mr. Sparks, making 14,727 used ballots. Beside these there were 102 rejected ballots and 30 cancelled, making in all 14,859 ballots. There were also 21 ballots declined. (See Sec.105). The same return states the unused ballots as 13,770, which would make up 28,650, the rejected, cancelled and declined ballots being apparently counted as not included in the used or unused ballots.

The supplies sent to Mr. Scott by the Clerk of the Crown in Chancery had been enclosed in three wooden boxes or cases and the letter of instructions from the latter officer of 18th October, 1926, had directed him to return to the Clerk the Writ, the Return and other papers and packages specified in the Act. On 13th December, 1926, he returned by express one of the three boxes with therein the envelopes received from the Deputies containing ballot papers and other papers as required by Sec.144. On 24th December, 1926, he wrote the Clerk that he had yet two boxes or cases and a few poll books and "unused forms" and asked if he would return them or store them for future use in the riding and by letter of 28th December the Clerk instructed him to return all boxes, poll books and "unused forms" he might have on hand to the Clerk. On 3rd January, 1927, he sent to the Clerk by express the other two boxes and therein a number of forms, poll books and other books and papers.

Before the polling day Mr. Scott rented an upstairs room in a building owned by F. W. Hill, No. 282 Sunnyside Avenue, and he appears to have had the use of and used that room and two rooms spoken of as a middle room

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opening off the entrance hall, and a back room on the ground floor in the same building for his purposes as Returning Officer until late in January. The middle room was in fact used as a polling place on election day and also a few days later for the holding of a poll for the municipal election. He states that he removed the undistributed ballots, those which he had not sent to any Deputy Returning Officer, from his residence to these rooms about 8th to 10th December, 1926. He at first informed us and employees of the Modern Press believed that the unprinted sheets of ballot forms were returned from the printing office to him. Mr. Scott also at first informed us and evidently believed that he had himself packed those unprinted sheets and also the undistributed ballots in one of the two boxes sent to the Clerk of the Crown in Chancery on 3rd January, 1927. The three boxes sent by him had been duly received by express at the Clerk's office and had remained unopened till produced before us, the Clerk having been so instructed. He produced them and they were opened in our presence and in presence of Mr. Scott and the Counsel appearing and those attending. It was then found, to Mr. Scott's apparent surprise, that the box in which he thought he had packed and sent to Toronto the ballot form sheets and undistributed ballots was empty, nor were they to be found in either of the other two boxes. He was at first inclined to think the sheets and ballots had been surreptitiously taken out of the box by some person or persons through illwill to him, but after hearing various witnesses depose to finding or seeing

numbers of ballot pads and ballots in the back room referred to he admitted that he must have omitted to take care of or return the ballots and the unprinted sheets and also that in fact he might not have received back the latter from the printer. Later on, the workman of the Modern Press who had cut the printed ballot sheets into ballot forms was called and stated that nearly four months after the election he had noticed a quantity of unprinted sheets in their storeroom and to prevent them being made use of he had cut them up and had them destroyed as waste paper. There were he thought about five or six packages of about 500 sheets, one package being open. Such opening may have been to get sheets to replace others spoiled. This we consider accounts for the destruction in or about the month of April 1927 of the sheets of ballot forms which had not been used in printing the ballots.

In the other one of the two boxes returned together by Mr. Scott were found four pads of stubs, in all 125, one of which pads having the counterfoils attached.

Mr. Scott gave up possession of the three rooms late in January 1927 and after an interval the middle room downstairs opening off the hall was rented to a newspaper association for distributing newspapers to newsboys but about September 1927 they occupied the back room instead of the middle room for that purpose. In that back room when they got possession of it were, with other litter, an open wooden box and an open basket in which were among waste paper and rubbish loose ballot papers and packets of ballots. Some of these were thrown about in the room and some taken outside by some of the boys. We have not had any evidence

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indicating that any ballots were seen inside the room or found outside of it before that occupation by the newsboys in September.

On the afternoon of 1st October, 1927, George Landerkin saw a number of papers estimated at about 75 lying scattered on Aylmer Avenue and noticing them to be ballots picked up 19 of them. They were only ballot papers detached from counterfoil and stub and having no numbers or initials or writing. These 19 were later handed by him to his solicitor, Alexander Smith, and by him to Mr. Sparks who on 13th October, 1927, sent them to Mr. Sinclair, M. L. A., by whom they were produced to the Legislative Assembly, on 14th February, 1928. Close examination of them shows them to correspond with ballots printed on the ballot form sheets sent to the Returning Officer by the Clerk of the Crown in Chancery.

Charles J. Mullin saw one or two ballots on the street on Aylmer Avenue sometime after September in the fall of 1927.

Sometime in October or November 1927 Mr. Thomas O'Neill saw a number of ballots, he thought over 100, lying on Aylmer Avenue for some days. He had picked one up. It had no counterfoil.

Cyril Nelson Wilkins, a young newsboy, states that he had seen quite a lot of ballot packets with junk in a basket in the back room spoken of. He says this was in May or June 1927 but we think he is mistaken about the month. He had found in this back room even so late as 24th February, 1928, one packet which next day he gave to W. J. Lowrie.

Mr. Lowrie, who was a Deputy Returning Officer, says that Wilkins gave him a packet of ballots on 25th February, 1928, which he handed to Mr. Birkett, M. L. A., - Mr. Birkett produced them before us. They consist of a packet of ballots having counterfoils and stubs and a few separated ballots, some with and some without counterfoils and stubs. They were evidently from the black bordered blank sheets sent from Toronto to the Returning Officer and also corresponded with the type of the Modern Press and bore numbers within 30,000.

Inspector Stringer of the Provincial Police during our investigation visited the back room referred to and found and produced two ballot papers without counterfoil or stub found on the floor under a wooden box. He made enquiries of several newsboys who informed him of ballots having been seen by them in the room, some being in packets, and of some ballots being taken out by boys.

Mr. A. E. Forde, who was Deputy Returning Officer at the municipal election on 6th December, 1926, in the middle room, found the door between that and the back room not locked or fastened and in fact went into the back room to stop the drafts in doors and windows and saw in it what appeared to be boxes and election papers with various litter and said it looked like a junk room but he could not say that he noticed any ballot papers. His son, who acted as Poll Clerk, gave similar evidence.

Mrs. Charles Dore, living at 16 Aylmer Avenue, remembered her daughter aged ten bringing her a number of ballots which she said she had found on the street. The daughter said she had 108. Out of these her husband counted

63 which he says were all loose and not in packets. Mr. and Mrs. Dore were very uncertain as to the date but she thinks it was after her return to Ottawa in August or September 1927.

Harold Nicholson, a newsboy, had seen ballots in the back room in a basket after the newsboys began to use it. Some were in packets, some loose and some torn off. He took two pads home of which he gave some to other boys. He thought nearly all the boys took or had some of the ballots.

The foregoing evidence would account for several hundred blank ballots but not for all Mr. Scott had, but it satisfies us that Mr. Scott instead of sending the 1350 undistributed ballots to Toronto as he had been instructed and as he evidently believed to be a duty which he had performed, had left them uncared for in the back room when he surrendered its possession and that those produced by Mr. Sinclair and those found and seen by others on the streets and elsewhere were part of those so left by Mr. Scott in the back room. Some of the ballots may form part of those separated from the 125 stubs found in the box sent by him to Toronto. But none of the ballots produced to us had any initials of any Deputy Returning Officer or any indication of having been issued to or by any such officer.

Mr. Starr and Mr. McRuer at our request went carefully through the returns of all the Deputy Returning Officers and compared their returns with the unused ballots and the stubs of used ballots and the spoiled and rejected ballots in their respective envelopes and made note of the

number and size of packets so as to ascertain what the numberings would be of the ballots undistributed by the Returning Officer. In 13 cases the D. R. O's had not returned all the stubs of the used ballots but no unused ballots or pads thereof were found to be missing. Mr. Harry A. Stark has carefully analysed the result of this examination and his report thereon is forwarded herewith. It is thus shown that out of the total quantity of 30,000 ballots printed 2592 stubs bearing serial numbers are missing, of which 946 are not returned by the D. R. O's, leaving 1646 less those found ^{on} ~~in~~ ^{street} ~~the~~ unaccounted for. But it is not shown that any ballot papers are missing other than those undistributed by Mr. Scott. While numbered stubs are produced by witnesses before us as being found on the streets or in the back room used by the Returning Officer there is no indication that the numbers printed thereon were part of those issued to any Deputy Returning Officer.

As already mentioned, Mr. Scott did not make any note of the serial numbers issued to any Deputy Returning Officer so that he was unable to state what were the numbers on the undistributed ballots. Why the 125 stubs in possession of the Returning Officer were separated from their ballots could not be explained, nor why the counterfoils were still left on the one packet.

In view of the evidence we have not thought it necessary to call any of the Deputies to explain the absence of the stubs inasmuch as they are not shown to be other than those of used ballots and would not account for the many

ballot papers found. But their absence in those 13 subdivisions shows that Deputies should have impressed upon them the necessity of more carefulness in the performance of their duties.

It is also to be noted that although Mr. Scott appointed 29 polling stations in addition to the 94 mentioned in his proclamation and the 1 advanced poll, making 124 in all, his return (form 32 under Sec.143) shows only 95 subdivisions, making no mention of the other 29 and giving no indication that they had existed although he sent in a list of 124 D. R. O's and their poll clerks to be paid.

The affidavits both of the printer (under Sec.72) and of the Returning Officer (under Sec.144) required by the Election Act appear to have been carelessly prepared and do not show whether the makers were sworn or affirmed, nor that proper precautions were taken to verify the statements made therein.

Messrs. Starr and McRuer in examining the contents of the envelopes delivered by the Deputy Returning Officers to the Returning Officer found in the envelope returned from Polling Subdivision No. 164 the stubs of 300 ballots in three pads numbered 10101 to 10300. According to the statement by the Deputy Returning Officer and the return by the Returning Officer that was the full number issued to that subdivision. But in the envelope was also found a pad of 25 stubs numbered 25776 to 25800 of which 19 (numbers 25782 to 25800) have the counterfoils and ballots still attached. How this pad came to be in that envelope and how and why the 6 counterfoils and ballots were detached therefrom does not appear.

As the ballots found and produced before us are evidently part of those printed under the Returning Officer's directions and on the special paper furnished to him by the Clerk of the Crown in Chancery and as there is little doubt that all the ballots found or seen on the street or in or about the room previously surrendered by the Returning Officer were of the same character and there is no evidence or indication that any improper use of any of them was made or attempted or intended, we do not find that any criminal act was committed in relation thereto. But their being so found out of proper custody might create suspicion or uncertainty in view of the possibility of collusion or conspiracy in relation thereto, which might be a breach of criminal law.

As a means of guarding against such improper use of ballots whether forged or genuine we are of opinion that the Returning Officer should before handing the ballot with its counterfoil to the voter allow the agents of the candidates to see both and to note the number and the poll book number on the counterfoil and should also when the ballot is returned to him by the voter show to the agents both those numbers and his own initials before tearing off the counterfoil and placing the ballot in the box. This would in no way interfere with the secrecy of the ballot. It would also be advisable to require the Returning Officer to note and send to the Clerk of the Crown in Chancery with the envelopes received from the Deputies a record of the numbers printed on the ballots obtained from the printer and on those delivered to each Deputy and those undistributed

and to send therewith those undistributed ballots.

In this case the Clerk by letter requested the Returning Officer to instruct the Deputies to count the ballot papers received by them, but it might be well to make that a statutory duty.

In compliance with the specific requirements of our Commission we therefore report as follows:

1. The 19 ballots produced by Mr. Sinclair before the Legislative Assembly were genuine official ballots, that is properly printed for the Returning Officer, but not distributed or used by him.
2. Those 19 ballots were, among others estimated to be about 75 in number, found on the roadway on the south side of Aylmer Avenue on the 1st October, 1927, by George Landerkin of Ottawa and were by him delivered to Alexander Smith of Ottawa, Barrister, who sent them to Mr. Sinclair, M. L. A. for South Ontario.
3. We have no evidence or indication before us that any criminal offence or any offence against the Election Act or any other Ontario Act took place on the part of any person in connection with the said 19 ballots, but we find that they were part of the ballots printed for and in the custody of the Returning Officer, and that there was culpable conduct on the part of the Returning Officer, Francis M. Scott, in not taking care of the ballots not distributed by him to the Deputy Returning Officers and the ^{un}imprinted stubs of ballot forms and in not returning the same to the Clerk of the Crown in Chancery and in leaving the ballots uncared for and as if waste material in the premises used by him as Returning

Officer and never asking or obtaining the return of the unprinted sheets of ballot forms from the printer.

4. We find with regard to the printer F. W. Runge, manager and proprietor of the Modern Press in Ottawa, that he and some of his employees were not guilty of any collusion, connivance, incompetence or wilful wrongdoing, but he and his employees must share the blame for want of care in dealing with the ballots and ballot paper. Neither he nor his employees can say definitely how much government paper, properly prepared in strips for printing the ballots, was sent to him, nor what was, by count, the exact number of ballots delivered to the Returning Officer. No receipts were taken for the ballots when printed and delivered, although the Returning Officer got them on three different occasions. All this added to the difficulty of tracing where the ballots found in the streets of Ottawa came from. No record was kept of the number that remained of sheets of government ballot paper not used for the printing of the ballots, nor was the same returned to the Returning Officer at any time, but was, after being in the storeroom of the Modern Press for some months taken out, cut in strips and burned in the furnace by George E. Smith, the cutter in the employ of the Modern Press Limited. This may be said to be unintentional wrongdoing as the sheets should have been returned to the Returning Officer to be by him forwarded to the Clerk of the Crown in Chancery.

With regard to the Returning Officer for South Ottawa, we find that he was guilty of carelessness, irregularity, negligence and incompetence, as well as of

unintentional wrongdoing. He was not able to state the amount of government paper properly prepared for printing ballots which was sent to him. He does not know how much he gave to the printers, nor how much was left in their hands when the ballots were returned to him. He did not count the number of ballots sent back to him, nor did he return the undistributed ballots together with the unused ballot paper, as comprehended in the regulations, to the Clerk of the Crown in Chancery. He left the undistributed ballots, according to the evidence, in a room into which the ballot boxes were delivered on the day after the election, or in the adjoining room, and neglected or forgot to pack them up in the boxes which as required by the regulations he forwarded to Toronto. Consequently they never reached the Clerk of the Crown in Chancery. They appear to have been left in the rooms mentioned until occupied by the newsboys by arrangement with the newspaper Subscription Bureau for the purpose of getting their papers for delivery, and were by them, in boyish fashion, thrown around the room or carried off and either retained or thrown away around the streets of Ottawa. Only about 200-300 ballots have been traced, but we find as a fact that the whole balance of printed ballots undistributed to the Deputy Returning Officers amounts to about 1350, all of which appear to have disappeared and been destroyed in various ways after having been left in the rooms we have mentioned. It was unnecessary, as it seemed to us, to follow up further the particular modes of destruction, as it was quite evident that the scattering around the streets of Ottawa was likely to attract the

attention of those who saw or picked them up, who disposed of them in various ways.

No one admitted before us having scattered any on Aylmer Avenue, where not only the 19 ballots found by Mr. Sinclair were picked up, but a ballot (not produced) was found by Thomas J. O'Neill of Ottawa, among a number which he estimated at about 100. Those produced by Mr. Birkett came, through Mr. Lowrie, directly from a newsboy who found them in the rooms used by Mr. Scott.

We have no evidence before us which would justify any strictures on our part upon the poll clerks or constables in the said election, or on the part of any officer or servant of the Government of Ontario. We find however that in a few cases the stubs belonging to ballots enclosed in the envelopes containing the Deputy Returning Officers' returns were missing, but no other irregularity appears. We may also call attention to the inadvisability of any room used as an office by Returning Officers or for any election purposes being in close proximity to the quarters of any political club or organization.

5. We find, and Mr. Sparks also expressed before us his opinion that the result of the election in South Ottawa was not affected by any of the facts shown or indicated before us.

6. In the course of our investigation we have considered whether a better system or procedure could be adopted in relation to Provincial elections and beg respectfully to submit the following suggestions:

(a) It is not enough that the Returning Officers in all constituencies should be honest, but they should be thoroughly competent and careful, as the position is one of the greatest importance having regard to the proper conduct of elections generally and demands high qualifications. It might be well to consider whether a permanent County official would not be the most appropriate person to have official charge of the elections in his district.

(b) The supplies of government paper for the printing of ballots should be carefully checked from time to time while in the possession of the Clerk of the Crown in Chancery and when issued the sheets should be counted and recorded. When delivered to Returning Officers they should be duly and accurately receipted for.

(c) When a Returning Officer has received the paper on which the names of the candidates are to be printed and hands it over to the printer he should likewise take every care as to the amount of paper he delivers, as well as to the amount of paper and the number of ballots he receives back. It should not be too much trouble to count these in order to have an accurate result. And he should keep a list of the numbers on the ballot pads delivered to each Deputy Returning Officer.

(d) More definite and particular descriptions of all supplies intended to be accounted for and returned should be given to the Returning Officer showing what he is expected to send back. His account as Returning Officer should not be paid until the instructions have been complied with to the satisfaction of the Clerk of the Crown in Chancery.

There is no reason why the boxes containing these returned unused supplies should not be opened on their receipt as they do not contain any ballots or other material used in the election.

(e) Some more modern and up to date method of insuring the safety of the paper on its way to the Returning Officers and as to the transmission of the returns, ballots and unused supplies to the Clerk of the Crown in Chancery, and some better device for fastening and making inviolable both the envelopes enclosed and the boxes themselves while in transit should be devised. Sealing wax is a very fragile bond when the envelopes are tightly packed and is of no use on the outside of a heavy box.

7. An amendment to the Ontario Election Act might still further secure the secrecy of the ballot by a provision that when the voter returns to the Deputy Returning Officer the ballot which he has marked the number on the counterfoil while still attached to the ballot should be shown to the agents or scrutineers for comparison with the stub number before it is destroyed. And the agents or scrutineers should be shown the numbers on stub and counterfoil before the ballot is handed to the voter. The secrecy of the ballot would in no way be endangered.

All of which is respectfully submitted.

Wm. H. H. H.

Frank E. H. H.

Toronto April 11th 1928

